HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 9717/2018

Dharnia Motors, C/o Jambeshwar Udhyog, Bikaner Road Nokha, Bikaner (Raj) Through Its Proprietor Jitendra Bishnoi S/o Shri Om Prakash Bishnoi, Aged Around 31 Years, R/o Ward No. 35, Bikaner Road, Nokha, District Bikaner (Raj.)

----Petitioner

Versus

1. Union Of India, Through Under Secretary To The Government Of India Department Of Revenue, Ministry Of Finance North Block, New Delhi
2. Gst Council Secretariat, 5Th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi
3. Superintendent, CGST Range XXVIII, Opposite Chetan Mahadev Temple, Jaipur Road, Bikaner- 334003

----Respondents

For Petitioner(s)	:	Mr. Sharad Kothari
For Respondent(s)	:	Mr. Rajvendra Saraswat

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE MUNNURI LAXMAN
(THROUGH V.C.)

JUDGMENT

PRONOUNCED ON :: 29/11/2024

REPORTABLE

(PER HON'BLE THE CHIEF JUSTICE):

1. By way of this writ petition filed under Article 226 of the Constitution of India, the petitioner has claimed that he is entitled to transitional credit of excise duty made through Credit Transfer Document (for short, 'CTD') by way of filing TRAN-3 without insisting on submission of TRAN-1 declaration within the time stipulated under Rule 117 of the Central Goods and Services Tax Rules, 2017 (for short, 'the CGST Rules, 2017').

Relevant Factual Matrix:

2. The factual background giving rise to the present petition, relevant for decision making in the present case, is that the petitioner is a trader dealing in automobiles, motorbikes and other vehicles and registered under the GST Laws having been issued a certificate of registration on 22.09.2017. In the petition, it has been stated that the petitioner is a sub-dealer of Hero MotoCorp Ltd. and engaged in selling motorbikes after procuring them from the primary dealer of Hero MotoCorp Ltd. He being sub-dealer, was not issued direct invoices by the manufacturer- Hero MotoCorp Ltd. and instead, the invoice was issued by the Hero MotoCorp to the primary dealer capturing the incidence of excise duty. As such, the excise duty paid by the primary dealer initially came to be embed in the cost of the goods when purchased by the petitioner. The petitioner was not in possession of the documents evidencing payment of excise duty on the goods in question being sold by the petitioner as sub-dealer of Hero MotoCorp Ltd.

3. It is further averred in the petition that the petitioner being a sub-dealer of the auto manufacturers had accumulated balance of credit of excise duty on the goods purchased and held in stock as on 30.06.2017 i.e. the day immediately preceding the appointed day when the Central Goods and Services Tax Act, 2017 (for short 'the CGST Act, 2017') came into force on 01.07.2017. The provisions contained in Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017, provided for mechanism for transitional arrangements for availing input tax credit. The petitioner was not required to be registered under the erstwhile Central Excise Act, 1944 and as provided under sub-section (3) of

Section 140 of the CGST Act, 2017, he was entitled to credit of excise duty on goods held in stock as on 30.06.2017. The petitioner fulfills the statutorily prescribed eligibility conditions enumerated therein.

4. It is the case of the petitioner that even though sub-rule (1) of Rule 117 of the CGST Rules, 2017, provided that every registered person entitled to take credit of input tax under Section 140, shall submit a declaration in TRAN-1 within the stipulated period of ninety days, further extendable by ninety days, even if there is unintentional failure to submit declaration within the stipulated period, the indefeasible statutory right vested under sub-section (3) of Section 140 of the CGST Act, 2017, to claim transitional credit of excise duty, could not be defeated.

5. It is the further case of the petitioner that vide notification No.21/2017, dated 30.06.2017, respondent No.1 brought into force the system of issuance of CTD by the manufacturer to the dealer, on the strength of which the corresponding dealer was authorised to claim credit of excise duty by way of filing TRAN-3. The said notification did not specify any other actionable on the part of the trader/dealer for availment of transitional credit on the strength of CTD, except to file TRAN-3. Even the CGST Rules, 2017, brought into force on 22.06.2017, did not contain any stipulation as regards co-relation with or simultaneous compliance of notification No.21/2017, dated 30.06.2017 for availment of transitional credit.

6. The petitioner having received three CTDs' from the manufacturer- Hero MotoCorp Ltd. on 03.09.2017, filed TRAN-3 on GST portal feeding information of the aforesaid three CTDs' for the

purpose of claiming benefit of transitional credit of excise duty. However, later on, the petitioner came to know that his claim of carried forward VAT made by way of filing separate TRAN-1 had been processed, but the claim made in TRAN-3 had not been processed. A complaint, therefore, was made, but no head was paid and he was informed vide Memo 20.05.2018 that his complaint is closed. The petitioner believes that its claim under TRAN-3 could not be processed as it was not supported by simultaneous claim of transitional credit of excise duty under TRAN-1. Subsequently, another notification No.34/2017 was issued on 15.09.2017 adding instructions in the standard format of TRAN-1 form to mandate simultaneous filing of TRAN-1 and TRAN-3 where the trader/dealer sought to claim credit through CTDs'.

Submissions of the petitioner:

7. Learned counsel for the petitioner argued that even though there is no requirement of the substantive provisions, as contained in Section 140 of the CGST Act, 2017, in the matter of claim of transitional credit, the Rule framed by the Rule Making Authority exceeds power under the enabling Act, imposing a condition of submitting statutory declaration in TRAN-1 within the stipulated period. It is his submission that firstly, on fulfillment of eligibility conditions prescribed under sub-section (3) of Section 140 of the CGST Act, 2017, entitlement to credit of excise duty is vested; secondly the Rule requiring submission of declaration in TRAN-1 is merely a procedural law and has, therefore, to be treated as directory and not mandatory. It is further submitted that there does not exist any co-relation between the two

mechanisms for claim prescribed under the notifications dated 30.06.2017 and 15.09.2017 and both are distinct and disjoint. Further, the notification dated 15.09.2017 does not insert any substantive provision in the CGST Rules, 2017, least of all in the statute to make it mandatory that TRAN-1 and TRAN-3 filings have to be contemporaneous. The requirement of submission of TRAN-1, as a piece of subordinate legislation, is merely processual in nature and cannot defeat the statutory right of claiming transitional duty of excise conferred under sub-section (3) of Section 140 of the CGST Act, 2017, once the statutorily prescribed conditions are fulfilled.

8. In support of his contentions, the learned counsel for the petitioner relied upon several authorities in the cases of **(1) Naresh Chandra Agrawal Vs. ICAI & Ors. Civil Appeal No. 4672/2021, decided on 08.02.2024; (2) State of T.N. & Anr. Vs. P Krishnamurthy & Ors.[1]**; **(3) Ispat Industries Ltd. Vs. Commissioner of Customs[2]**; **(4) Additional District Magistrate Vs. Siri Ram[3]**; **(5). Eicher Motors Ltd. & Ors. Vs. UOI[4]**; **(6) Global Ceramics Pvt. Ltd Vs. Principal Commissioner of Central Excise Delhi-I, W.P. (C) No. 6706/2016, decided on 24.05.2019; (7) CCE, Pune Vs. Dai Ichi Karkaria Ltd.[5]; (8). Dipak Vegetable Oil Industries Ltd. Vs. Union of India[6];** and **(9) Siddharth Enterprises Vs. The Nodal Officer.[7]**

<u>Submissions of the respondents:</u>

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1 (2006) 4 SCC 517
2 (2006) 12 SCC 583
3 (2000) 5 SCC 451
4 (1999) 2 SCC 361
5 (1999) 7 SCC 448
6 1991 (52) ELT 222 (Guj)
7 2019 (29) GSTL 664

9. Per contra, learned counsel for the respondent-Revenue would reply to the submission in opposition to the reliefs sought in the writ petition by submitting that right to claim transitional credit, as provided under sub-section (3) of Section 140 of the CGST Act, 2017, is not absolute, but can be availed upon fulfillment of eligibility conditions prescribed in the statutes and also by submitting specific statutory declaration, as provided in TRAN-1, appended to the CGST Rules, 2017 and that too within the stipulated period. The Rule clearly provides that every registered person entitled to take credit of input tax under Section 140 shall be obliged to apply within stipulated period in form GST GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit, to which he claims to be entitled to under the provisions of law. It is extendable for a further period of ninety days.

10. Learned counsel for the respondents further submits that sufficient opportunity has been granted by further providing that on the recommendation of the GST Council, further time for electronic submission of form GST TRAN-1 upto 31.03.2019 could have been allowed in respect of those registered persons, who could not submit declaration by due date on account of technical difficulties on common portal and in respect of whom the Council has made a recommendation. The petitioner failed to fulfill the statutory condition of submitting statutory declaration within the stipulated period, or within the extended period. Even no representation was made for consideration of the GST Council fur further extension upto 31.03.2019. He would further submit that submission of claim within the stipulated period is not provided for

the first time under the Rules, but the substantive provision of Section 140 itself provides that such claim has to be made within the prescribed period. Vide notification dated 30.06.2017, the Government devised a mechanism to fecilitate taxpayers to claim transitional credit through CTD for those, who were not registered under the Central Excise Act, 1944, but got registered under the provisions of the CGST Act, 2017 and in possession of such manufactured goods held in stock on such dates, subject to such limitation, conditions and procedures, as specified in the said notification. He submits that even TRAN-3 form was also submitted by the petitioner after due date. Vide notification dated 15.09.2017, the Government stipulated that registered person availing credit through CTD should also include the details of CTD in TRAN-1 form. Therefore, it cannot be said that notification dated 15.09.2017 was either distinct or disjoint to the notification dated 30.06.2017. The petitioner failed to submit statutory declaration in TRAN-1 form within the stipulated or extended period despite all kinds of relaxations granted including the facility of revision also. He, despite reasonable time granted, did not comply with the conditions of law. The petitioner cannot claim right to practice any profession, or to carry on any occupation, or trade, or business without complying with the regulatory laws as the right is not absolute as the Government has power to impose reasonable restrictions, which has been made under law, which has not been challenged in this petition. Relying upon the decision of the Hon'ble Supreme Court in the case of **Indian Oil Corporation Ltd. Vs. State of Bihar & Ors., (TS-347-SC-2017-VAT),** it is submitted that no assessee can claim set off as

a matter of right. Further relying upon another decision of the Bombay High Court in the case of **JCB India Limited Vs. Union of India & Ors., (2018-TIDL-23-HC-Mum-GST),** it has been submitted that CENVAT credit has been held to be a mere concession and cannot be claimed as a matter of right *dehors* the provisions of law as the petitioner did not fulfill the requirement of law in the matter of availing transitional credit. The petitioner is not entitled to the relief, as sought, and the present petition is liable to be dismissed.

11. We have heard learned counsel for the parties and perused the records as also various decisions cited at the Bar.

Analysis and conclusion:

12. Before adverting to various submissions, it need to be noticed that the petitioner is not assailing constitutional validity of any of the provisions contained either in Section 140 of the CGST Act, 2017, or the provisions contained in Rule 117, or any other rule of the CGST Rules, 2017, much less the validity of two notifications dated 30.06.2017 and 15.09.2017. The petitioner's case is that the provisions contained in sub-section (3) of Section 140 of the CGST Act, 2017 read with the provisions contained in Rule 117 of the CGST Rules, 2017 and various circulars have to be construed and interpreted in a manner that once statutory conditions, as laid down in Section 140(3) of being eligible to claim transitional credit, are made out, the provisions contained in the rule requiring certain procedural formalities to be completed, even if not complied with, could not be made a basis to deny claim. In other words, the petitioner's argument is that the requirement of submission of TRAN-1 declaration, as provided

under Rule 117 of the CGST Rules, 2017, is not a substantive or mandatory provision, but merely processual or directory, violation of which cannot lead to rejection of claim. Once eligibility to claim transitional credit under Section 140 of the CGST Act, 2017 is made out in terms of eligibility criteria provided under the statutes itself, the registered dealer could submit his claim for transitional credit at any point of time and not necessarily bound by limitation prescribed under the law. Taking it to the extreme, it is submitted that even if TRAN-1 declaration is not made, claim has to be processed.

13. The entire indirect tax regime in the country underwent a major reform with the introduction of Goods and Services Tax w.e.f. 01.07.2017. The Central Goods and Services Tax Act, 2017 and Rajasthan Goods and Services Tax Act, 2017, replaced Central Excise Act, 1944, Service Tax Law under Chapter V of the Finance Act, 1994 and the Rajasthan VAT Act, 2003. The petitioner was earlier registered under the VAT regime and later on, he got himself registered under the CGST Act, 2017 as well as RGST Act, 2017. With the introduction of GST Laws in respect of traders who were required to be registered, a question arose with regard to their entitlement to avail credit in respect of the goods which were held in stock just before the appointed day. On the input side, those traders who were required to pay excise duty, if the goods were purchased from manufacturer or VAT/CST if the goods were purchased from other trader and on the output side, such traders were required to pay only VAT/CST, whereas under the GST regime, such traders are required to pay GST at a rate which subsumes not only the VAT component, but also the excise duty

component. However, under the then regime of law, credit of only VAT portion was availed by such traders and no credit was taken of the excise duty paid.

14. The Legislature intended to continue the benefit of input tax credit to bridge the transitional phase by providing for transitional credit benefit under Section 140 of the CGST Act, 2017 and to resolve the anomalous situation, under this provision, the petitioner claims to be entitled to the benefit of transitional credit, denial of which has given rise to this petition.

15. Section 140 of the CGST Act, 2017, for ready reference, is extracted herein below:-

> "140. **Transitional arrangements for input tax credit.**—(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit 6 [of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law [2][within such time and] in such manner as may be prescribed:
>
> Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—
>
> (i) where the said amount of credit is not admissible as input tax credit under this Act; or
> (ii) where he has not furnished all the returns required under the existing law[2] [within such time and] for the period of six months immediately preceding the appointed date; or
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> (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.
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> (2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately

preceding the appointed day[3] [within such time and] in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation.––For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law;

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished[4] [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:––

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;

(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or Act, provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994 (32 of 1994), but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,—

(a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the[1] [existing law, within such time and in such manner as may be prescribed], subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished[2] [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:––

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as[1] [credit under this Act, within such time and in such manner as may be prescribed, even if] the invoices relating to such services are received on or after, the appointed day.

(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day[2] [within such time and in such manner] as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an

original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

(9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such[3] [credit can be reclaimed within such time and in such manner as may be prescribed, subject to] the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

(10) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

Explanation 1.—For the purposes of[4] [sub-sections (1), (3), (4)] and (6), the expression "eligible duties" means––

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

1[***]

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001),

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Explanation 2.—For the purposes of[2] [sub-sections (1) and (5)], the expression "eligible duties and taxes" means––

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

3[***]

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001); and

(viii) the service tax leviable under section 66B of the Finance Act, 1994 (32 of 1994),

in respect of inputs and input services received on or after the appointed day.

[4][*Explanation* 3.—For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in *Explanation* 1 or *Explanation* 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975).]"

16. The petitioner, admittedly being registered person, who was not liable to be registered under the existing laws just before the appointed day i.e. 01.07.2017, could claim input tax credit for eligible duties in respect of inputs held in stock and inputs contained in semi finished or finished goods held in stock on the appointed day.

17. However, it is relevant to notice that substantive provision contained in sub-section (3) of Section 140 of the CGST Act, 2017, clearly mandates that entitlement to take credit of eligible duties would be available within such time and in such manner, as may be prescribed, subject to conditions as laid down.

17.1 Therefore, apart from condition enumerated in clause (i) to clause (v), the provisions contained in the statute itself regulate the claim of credit of eligible duties. The expression "within such time and in such manner as may be prescribed", mandated the Rule Making Authority to make necessary provisions in this regard, which was done by the Central Government by framing the CGST Rules, 2017 and in particular, laying down complete procedure towards claim credit of eligible duties as input tax credit, as required under Rule 117 of the CGST Rules, 2017. The said provisions being relevant are extracted as below:-

> "**117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day.**--(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit [1][of eligible duties and taxes, as defined in Explanation 2 to section 140] to which he is entitled under the provisions of the said section:

Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days.

Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.

[2][(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in **FORM GST TRAN-1** by a further period not beyond [3][31st March, 2020], in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.]

(2) Every declaration under sub-rule (1) shall--

(a) in the case of a claim under sub-section (2) of section 140, specify separately the following particulars in respect of every item of capital goods as on the appointed day-

(i) the amount of tax or duty availed or utilized by way of input tax credit under each of the existing laws till the appointed day; and

(ii) the amount of tax or duty yet to be availed or utilized by way of input tax credit under each of the existing laws till the appointed day;

(b) in the case of a claim under sub-section (3) or the proviso or clause (b) of sub-section (4) or subsection (6) or sub-section (8) of section 140, specify separately the details of stock held on the appointed day;

(c) in the case of a claim under sub-section (5) of section 140, furnish the following details, namely:—

(i) the name of the supplier, serial number and date of issue of the invoice by the supplier or any document on the basis of which credit of input tax was admissible under the existing law;

(ii) the description and value of the goods or services;

(iii) the quantity in case of goods and the unit or unit quantity code thereof;

(iv) the amount of eligible taxes and duties or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services; and

(v) the date on which the receipt of goods or services is entered in the books of account of the recipient.

(3) The amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal.

(4) (a) (i) A registered person who was not registered under the existing law shall, in accordance with the proviso to sub-section (3) of section 140, be allowed to avail of input tax credit on goods (on which the duty of central excise or, as the case may be, additional duties of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975, is leviable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.

(ii) The input tax credit referred to in sub-clause (i) shall be allowed at the rate of sixty per cent. on such goods which attract central tax at the rate of nine per cent. or more and forty per cent. for other goods of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid:

Provided that where integrated tax is paid on such goods, the amount of credit shall be allowed at the rate of thirty per cent. and twenty per cent. respectively of the said tax;

(iii) The scheme shall be available for six tax periods from the appointed date.

(b) The credit of central tax shall be availed subject to satisfying the following conditions, namely:-

(i) such goods were not unconditionally exempt from the whole of the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated in the said Schedule;

(ii) the document for procurement of such goods is available with the registered person;

> [1][(iii) The registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in FORM GST TRAN-2 by 31st March 2018, or within such period as extended by the Commissioner, on the recommendations of the Council, for each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period:]
> [2][Provided that the registered persons filing the declaration in **FORM GST TRAN-1** in accordance with sub-rule (1A), may submit the statement in **FORM GST TRAN-2** by [3][30th April, 2020].]
>
> (iv) the amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal;
>
> (v) the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person."

18. Rule 117 of the CGST Rules, 2017 requires the registered person entitled to take credit of input tax under Section 140 of the CGST Act, 2017, to submit declaration electronically in Form GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit of eligible duties and taxes, as defined in Explanation 2 to section 140, to which he is entitled under the provisions of the said section. Therefore, the prescription of time limit is not merely a provision of Rule framed by the Rule Making Authority in exercise of rule making power conferred on it under the CGST Act, 2017, but is also a statutory mandate, as contained in sub-section (3) of Section 140 of the CGST Act, 2017, that such claim has to be made within the prescribed time and in such manner, as may be prescribed. Therefore, the Rule Making Authority had no option but to prescribe the time limit for making appropriate declaration consistent with the eligibility conditions contained in the law itself.

As a matter of law, non-prescription of specified period for submitting appropriate declaration in statutory form TRAN-1 would have been in contravention of statutory prescription contained in sub-section (3) of Section 140 of the CGST Act, 2017.

19. Even though the validity of Rule 117 of the CGST Rules, 2017 is not under challenge, the learned counsel for the petitioner has heavily relied upon the decisions in the cases of **Naresh Chandra Agrawal Vs. ICAI & Ors. (supra), State of T.N. & Anr. Vs. P. Krishnamurthy & Ors. (supra), Ispat Industries Ltd. Vs. Commissioner of Customs (supra)** and **Additional District Magistrate Vs. Siri Ram (supra),** to submit that subordinate legislation could override the substantive provision of the enabling Act and the Rule Making Authority does not have the power to make rule beyond the scope of the enabling law, or a rule which is inconsistent with law.

20. The said argument of the petitioner must fail because those judgments are not applicable and are clearly distinguishable on facts. Present is a case where requirement of prescription of time limit within which and the manner in which the claim has to be made, is mandated to be prescribed under the statute itself, as has been mentioned hereinabove. Therefore, prescription of time limit for submission of statutory declaration in TRAN-1 for verification of eligibility in terms of the provisions contained in the Act, cannot be said to be beyond the rule making power, much less inconsistent with the enabling Act. The argument in this regard must, therefore, fail.

21. There is no warrant for even reading down the provisions as the only ground on which power of the rule maker is questioned

that statute does not provide, which is based on patent misleading provisions of law itself. Further, the provisions contained in sub-rule (2) of Rule 117 of the CGST Rules, 2017 are very explicit, clear and unambiguous that a declaration in TRAN-1, is required to be submitted within the stipulated period of ninety days, which is extendable for further ninety days and in exceptional circumstances, on the recommendation of the GST Council, it could be further extended.

22. Learned counsel for the petitioner has asserted that claim of input tax credit in the form of transitional credit, under fulfillment of eligibility conditions, as provided in sub-section (3) of Section 140 of the CGST Act, 2017, become a vested right and, therefore, the same cannot be taken away, nor defeated only on the ground of non-fulfillment of processual provisions.

23. In support of this contention, reliance has been placed on the decisions rendered in the cases of **Eicher Motors Ltd. & Ors. Vs. UOI (supra); Global Ceramics Pvt. Ltd Vs. Principal Commissioner of Central Excise Delhi-I (supra); CCE, Pune Vs. Dai Ichi Karkaria Ltd. (supra); Dipak Vegetable Oil Indusries Ltd. Vs. Union of India (supra);** and **Siddharth Enterprises Vs. The Nodal Officer (supra).**

24. In the case of **Eicher Motors Ltd. & Ors. Vs. UOI (supra),** by introducing new scheme under the rules, the credit attributable to inputs already used in the manufacture of the final products and the final products which were already cleared from the factory alone, were sought to be lapsed. Thus, the benefit of credit was sought to be taken away by retrospective application, which was under challenge. It was in this context that Their Lordships in the

Hon'ble Supreme Court observed that the right to credit had become absolute at any rate when the input was used in the manufacture of the final products and in such circumstances, in the name of alteration of the scheme any retrospective or retroactive effect could not be permitted under the law. However, that decision does not postulate that benefit of input tax credit is a vested right and can be claimed without complying with the provisions of law.

25. In the case of **CCE, Pune Vs. Dai Ichi Karkaria Ltd. (supra),** the question which fell for consideration was as to what would be the cost of the raw material, whether it could be price paid by the manufacturer to its seller, or would be the price of the raw material less the excise duty thereon. Taking into consideration the statutory provisions contained in the scheme of law, it was held that the price would be less excise duty paid by the assessee. The observation was that the tax credit once validly taken, becomes a benefit available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. It was in this context that the credit was considered to be indefeasible. The pertinent observation was that the tax credit becomes a benefit available once validly taken.

25.1 In other two decisions in the cases of **Global Ceramics Pvt. Ltd Vs. Principal Commissioner of Central Excise Delhi-I (supra)** and **Dipak Vegetable Oil Indusries Ltd. Vs. Union of India (supra)** also, the principle laid down in the aforesaid case by the Hon'ble Supreme Court has been followed. The decision in the case of **Siddharth Enterprises Vs. The Nodal**

Officer (supra), is essentially based on consideration of it being a vested right.

26. The decisions in the aforesaid cases were rendered in the context of challenge made in those cases and it did not involve the issue as to what will happen in a case where a dealer fails to comply with the condition of submission of statutory declaration in TRAN-1, or where such declaration is not made within the stipulated period provided under the law. The observations made in the aforesaid judgment cannot be read in isolation but have to be understood in the context and in the light of the challenge made.

27. On principles, in at least two decisions, Their Lordships in the Hon'ble Supreme Court, have authoritatively laid down that input tax credit facility is a concession, which can be availed only in accordance with the provisions of law and not *dehors* the same.

28. In the case of **Jayam & Co. Vs. Assistant Commissioner & Anr.**[8]**,** following principle was propounded while dealing with challenge to the constitutional validity of Section 19(20) of the Tamil Nadu Value Added Tax Act in the matter of claim of input tax credit under the scheme of the Act:-

> "12. It is a trite law that whenever concession is given by statute or notification etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the 'dealers' to get the benefit of ITC but its a concession granted by virtue of Section 19. As a fortiorari conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken into consideration

8 AIR 2016 SC 4443

> but the net purchase price after discount is to be the basis. If we were dealing with any other aspect do hors the issue of ITC as per the Section 19 of the VAT Act, possibly the arguments of Mr. Bagaria would have assumed some relevance. But, keeping in view the scope of the issue, such a plea is not admissible having regard to the plain language of sections of the VAT Act, read along with other provisions of the said Act as referred to above."

29. In another judgment, dealing with the claim of input tax credit under the Tamil Nadu Value Added Tax Act, in the case of **ALD Automotive Pvt. Ltd. Vs. Commercial Tax Officer Now Upgraded as the Assistant Commissioner (CT) & Ors.[9],** the submissions which fell for consideration of the Apex Court were as below:-

> "10. Learned counsel for the appellants in support of the appeals contend that substantive and vested right of a registered dealer to claim Input Tax Credit cannot be curtailed and fettered by an unreasonable restriction imposed under Section 19(11) of the Tamil Nadu VAT Act, 2006 requiring claim to be made within 90 days from the date of purchase or before the end of the financial year whichever is later.
>
> 11. It is submitted that Section 19(11) makes the enforcement of the substantive right unreasonable as well as arbitrary and violative of Article 14 and 19(1)(g) of the Constitution. Such right under Section 3(3) of the Act cannot be taken away by Section 19(11) which is only a procedural provision. Section 19(11) is inconsistent with the charging Section 3(3) of the Act. In any view of the matter, Section 19(11) is only a directory provision and cannot be held to be mandatory. Sections 3(3) and 19(11) being part of the same scheme that is to allow Input Tax Credit, Section 19(11) has to be construed harmoniously so as not to take away the right which has been given under Section 3(3). Statutory benefit under Section 3(3) is mandatory being part of charging Section. Section 3 which entitles claim of Input Tax Credit does not contain any limitation hence such right could not be hedged by any limitation, as contained in Section 19(11)."

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9 AIR 2018 SC 5235

29.1 The reply submitted on behalf of the Revenue in the said case was noted thus:-

> "12. Learned Advocate-General of the State of Tamil Nadu refuting the submissions of learned counsel for the appellants contends that Section 19(11) of the Tamil Nadu VAT Act, 2006 contains essential conditions under which Input Tax Credit can be claimed by a dealer, hence, on non-compliance of the conditions the Input Tax Credit has rightly been denied to the appellants. Section 19(11) is a part of the same statutory scheme and does not suffer from any ultra-vires. Learned Advocate-General submits that judgment of this Court in Jayam and Company v. Assistant Commissioner and another, 2016 (15) SCC 125: (AIR 2016 SC 4443), where validity of Section 19(20) of the T.N. VAT Act, 2006 has been upheld and it has been laid down that whenever concession is given by the statute or notification, the conditions thereof should strictly be complied with in order to avail such concession, is fully applicable in the facts of the present case and all the appeals are liable to be dismissed."

29.2 On the submissions made, the issues arising for consideration were outlined as below:-

> "13. From the submissions of the learned counsel for the parties and evidence on record following are the issues which arise for consideration in this batch of appeals:
>
> (1) Whether Section 19(11) violates Article 14 and 19(1)(g) of the Constitution of India?
>
> (2) Whether Section 19(11) is inconsistent to Section 3(3) of the Act?
>
> (3) Whether Section 19(11) is directory provision, noncompliance of which cannot be a ground for denial of input tax credit to the appellants?
>
> (4) Whether denial of input tax credit to the appellants is contrary to the scheme of VAT Act, 2006?
>
> (5) Whether Assessing Authorities could have extended the period for claiming Input Tax Credit beyond the period as provided in Section 19(11) of Tamil Nadu VAT Act, 2006?"

29.3 After considering various provisions contained in the applicable enactment and decisions, following principles of law were propounded:-

> "32. The input credit is in nature of benefit/ concession extended to dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the Statute. Reference is made to judgment of this Court in Godrej and Boyce Mfg. Co. Pvt. Ltd. and Others v. Commissioner of Sales Tax and Others, (1992) 3 SCC 624: (AIR 1992 SC 2078). Rules 41 and 42 of Bombay Sales Tax, 1959 provided for the set off of the purchase tax. This Court held that Rule making authority can provide curtailment while extending the concession. In paragraph 9 of the judgment, following has been laid down:
>
> > "9... In law (apart from Rules 41 and 41A) the appellant has no legal right to claim setoff of the purchase tax paid by him on his purchases within the State from out of the sales tax payable by him on the sale of the goods manufactured by him. It is only by virtue of the said Rules - which, as stated above, are conceived mainly in the interest of public that he is entitled to such setoff. It is really a concession and an indulgence. More particularly, where the manufactured goods are not sold within the State of Maharashtra but are despatched to out-State branches and agents and sold there, no sales tax can be or is levied by the State of Maharashtra. The State of Maharashtra gets nothing in respect of such sales effected outside the State. In respect of such sales, the rulemaking authority could well have denied the benefit of setoff. But it chose to be generous and has extended the said benefit to such out-State sales as well, subject, however to deduction of one per cent of the sale price of such goods sent out of the State and sold there. We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule-making authority to provide for a small abridgement or curtailment while extending a concession. Viewed from this angle, the argument that providing for such deduction amounts to levy of tax either on purchases of raw material effected outside the State or on sale

> of manufactured goods effected outside the State of Maharashtra appears to be beside the point and is unacceptable. So is the argument about apportioning the sale-price with reference to the proportion in which raw material was purchased within and outside the State."

33. A Three-Judge Bench in (2005) 2 SCC 129: (AIR 2005 SC 1594), India Agencies (Regd.). Bangalore v. Additional Commissioner of Commercial Taxes, Bangalore had occasion to consider Rule 6(b)(ii) of Central Sales Tax (Karnataka) Rules, 1957, which requires furnishing original Form-C to claim concessional rate of tax under Section 8(1). This Court held that the requirement under the Rule is mandatory and without producing the specified documents, dealers cannot claim the benefits. Following was laid down in paragraph 13: (para 12 of AIR):

> "13.....Under Rule 6(b)(ii) of the Karnataka Rules, the State Government has prescribed the procedures to be followed and the documents to be produced for claiming concessional rate of tax under Section 8(4) of the Central Sales Tax Act. Thus, the dealer has to strictly follow the procedure and Rule 6(b)(ii) and produce the relevant materials required under the said rule. Without producing the specified documents as prescribed thereunder a dealer cannot claim the benefits provided under Section 8 of the Act. Therefore, we are of the opinion that the requirements contained in Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 are mandatory…"

34. This court had occasion to consider the Karnataka Value Added Tax Act, 2013 in State of Karnataka v. M.K. Agro Tech.(P) Ltd., (2017) 16 SCC 210. This Court held that it is a settled proposition of law that taxing statute are to be interpreted literally and further it is in the domain of the legislature as to how much tax credit is to be given under what circumstances. Following was stated in paragraph 32:

> "32. Fourthly, the entire scheme of the KVAT Act is to be kept in mind and Section 17 is to be applied in that context. Sunflower oil cake is subject to input tax. The legislature, however, has incorporated the provision, in the form of Section 10, to give tax credit in respect of such goods which are used as inputs/raw material for manufacturing other goods. Rationale behind the

same is simple. When the finished product, after manufacture, is sold. VAT would be again payable thereon. This VAT is payable on the price at which such goods are sold, costing whereof is done keeping in view the expenses involved in the manufacture of such goods plus the profits which the manufacturer intends to earn. Insofar as costing is concerned, element of expenses incurred on raw material would be included. In this manner, when the final product is sold and the VAT paid, component of raw material would be included again. Keeping in view this objective, the legislature has intended to give tax credit to some extent. However, how much tax credit is to be given and under what circumstances, is the domain of the legislature and the courts are not to tinker with the same."

29.4 The decision in the case of **Jayam & Co. Vs. Assistant Commissioner & Anr. (supra),** was quoted with approval as below:-

"35. The judgment on which learned Advocate General of Tamil Nadu had placed much reliance ie. Jayam and Company v. Assistant Commissioner and Another, (2016) 15 SCC 125: (AIR 2016 SC 4443), is the judgment which is relevant for present case. In the above case, this Court had occasion to interpret provisions of Tamil Nadu Value Added Tax Act, 2016, Section 19(20), Section 3(2) and Section 3(3). Validity of Section 19(20) was under challenge in the said case. This Court after noticing the scheme under Section 19 noticed following aspects in paragraph 11:

"11. From the aforesaid scheme of Section 19 following significant aspects emerge:

(a) ITC is a form of concession provided by the legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.

(b) Concession of ITC is available on certain conditions mentioned in this section.

(c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax."

36. This Court further held that it is a trite law that whenever concession is given by a statute the conditions thereof are to be strictly complied with in order to avail such concession. In paragraph 12, following has been laid down:

> "12. It is a trite law that whenever concession is given by statute or notification, etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the "dealers" to get the benefit of ITC but it is a concession granted by virtue of Section 19. As a fortiori, conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount is to be the basis. If we were dealing with any other aspect dehors the issue of ITC as per Section 19 of the VAT Act, possibly the arguments of Mr Bagaria would have assumed some relevance. But, keeping in view the scope of the issue, such a plea is not admissible having regard to the plain language of sections of the VAT Act, read along with other provisions of the said Act as referred to above."

37. The Constitutional validity of Section 19(20) was upheld. The above decision is a clear authority with proposition that Input Tax Credit is admissible only as per conditions enumerated under Section 19 of the Tamil Nadu Value Added Tax Act, 2016. The interpretation put up by this Court on Section 3(2) and 3(3) and Section 19(2) is fully attracted while considering the same provisions of Section 3(2) and 3(3) and provision of Section 19(11) of the Act. The Statutory scheme delineated by Section 19(11) neither can be said to be arbitrary nor can be said to violate the right guaranteed to the dealer under Article 19(1) (g) of the Constitution. We thus do not find any infirmity in the judgment of the High Court upholding the validity of Section 19(11) of the Act. Both the issues are answered accordingly."

30. In a subsequent decision in the case of **M/s TVS Motor Company Ltd. Vs. State of Tamil Nadu & Ors.[10],** again the principle in connection with another set of challenge arising in the

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10 AIR 2018 SC 5624

matter of claim of input tax credit under the Tamil Nadu Value Added Tax Act, was reiterated relying upon the dictum in the case of **Jayam & Co. Vs. Assistant Commissioner & Anr. (supra).**

31. In the case of **Jayam & Co. Vs. Assistant Commissioner & Anr. (supra),** it was authoritatively laid down that when a concession is given by the statute, the Legislature has power to make the provision stating the form and the manner in which such concession is to be allowed. There was no right, inherent or otherwise, vested with the dealer to claim the benefit of input tax credit except in accordance with the provisions of law. The objective of such provision imposing restrictions and regulations was also discussed as below:-

> "13. For the same reasons given above, challenge to constitutional validity of sub-section (20) of Section 19 of VAT Act has to fail. When a concession is given by a statute, the Legislature has power to make the provision stating the form and manner in which such concession is to be allowed. Sub-section (20) seeks to achieve that. There was no right, inherent or otherwise, vested with dealers to claim the benefit of ITC but for Section 19 of the VAT Act. That apart, we find that there were valid and cogent reasons for inserting Section 19(20). Main purport was to protect the Revenue against clandestine transactions resulting in evasion of tax. High Court has discussed this aspect in detail and our task would be accomplished in reproducing those paras as we are concurring with the discussion:
>
> > "64. Let us now point out the background/reasons for inserting Section 19(20) by Amendment Act 22 of 2010, by referring to the Chart, the sample instance is detailed in the Chart in paragraph (34). Let us recapitulate the entries in the Chart. Based on the sale price, i.e., Rs. 36,780/- in the tax invoice, an amount of Input Tax Credit, i.e., Input Tax Credit of Rs. 4m597.50 was available to the petitioner when he re-sells goods. Based on the Credit Note, the same goods are re-sold within the State at a lesser price than what was purchased, i.e., Rs. 33,777.78 (taking into account discount price, there is a profit margin for the dealer) and

thereby the output tax payable to the Government is reduced, leaving excess Input Tax Credit at the hands of the dealer. The said excess credit in the hands of the dealer might be adjusted to their other liabilities or might claim refund of the said excess Input Tax Credit. Taking excess Input Tax Credit and later in the guise of credit note giving discount and reducing the price of the goods which reduces the Output tax payable to the Government dwindles State revenue.

65. Learned Advocate General contended that seller and buyer coalition is issuing purchase invoice at an escalated price thereby taking benefit of excess Input Tax Credit and later in the guise of credit notes giving discount, reduced the price of the same goods and thereby reducing the output tax payable to the Government creates a dent of the State revenue. Learned Advocate General further submitted that excess Input Tax Credit available in the hands of the dealer is being adjusted to their other liabilities and the dealer might also make a claim of refund of Input Tax Credit as per Section 19(18) of the Act which were ultimately resulted in creating dent on the State revenue.

66. To contend as to how the so called discount and reduction of sale price caused revenue loss to the Government, the learned Advocate General has drawn our attention to the illustration stated in paragraph (6) of the counter which reads as under:-

"Purchase price of 10
Washing Machines Tax paid on purchase at ...Rs. 1,00,000/-

12.5% (ITC allowed) ... Rs. 12,500/-

Sale price after discount ... Rs. 75,000/-

Tax payable on sales at 12.5% ... Rs. 9,375/-

Excess ITC available (Difference between ITC and Output Tax) ... Rs.3,125/- Rs. 12,500-Rs.9,375

Excess ITC Adjusted ... Rs. 3,125/-"

67. As rightly contended by the learned Advocate General, the "Input Tax Credit" adjusted in the above illustration comes to Rs. 3,125/- in a single transaction and that it would run to several lakhs and crores for a year for a single dealer. The excess Input Tax Credit earned by the petitioners is being adjusted against the outstanding tax due or carried

> forward to next year or refunded. If this trend is allowed to continue, the concept of VAT that meant for payment of tax on every value addition gets defeated.
>
> 68. In order to protect the revenue and with a vie to curb the clandestine transactions resulting in evasion of tax, in respect of second and subsequent sales, Section 19(20)was introduced, where any dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of "Input Tax Credit" over and above the output tax of those goods, shall be reversed.
>
> 69. Constitutional Validity of fiscal legislation:- When there is a challenge to the constitutional validity of the provisions of a Statute, Court exercising power of judicial review must be conscious of the limitation of judicial review must be conscious of the limitation of judicial intervention, particularly, in matters relating to the legitimacy of the economic or fiscal legislation. While enacting fiscal legislation, the Legislature is entitled to a great deal of latitude. The Court would interfere only where a clear infraction of a constitutional provision is established. The burden is on the person, who attacks the constitutional validity of a statute, to establish clear transgression of constitutional principle. Observing that the law relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc., in R.K. Garg vs. Union of India [(1981) 4 SCC 675, this Court held as under:
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> xxx xxxx xxxx xxxx xxxx"

32. The requirement of statutory declaration in the prescribed proforma TRAN-1 is not an empty formality or mere procedural aspect, as has been contended before us. It constitutes a statutory pre-condition because eligibility to claim transitional credit under sub-section (3) of Section 140 of the CGST Act, 2017, is based on certain conditions, which are statutorily prescribed. The law requires appropriate solemn declaration to be made by the claimant by submitting electronically the details in TRAN-1 on GST portal.

33. The submission that provision under Rule 117 of the CGST Rules, 2017, requiring submission of declaration in TRAN-1, is merely processual and not a substantive provision and, therefore, not mandatory, cannot be accepted. Firstly, the provision under Rule 117(2) of the CGST Rules, 2017, requiring submission of statutory declaration in form TRAN-1, is not by virtue of rule making power alone. Such a requirement is mandated under the substantive provision contained in sub-section (3) of Section 140 of the CGST Act, 2017, which has been discussed in detail hereinabove. The use of expression "within such time and in such manner as may be prescribed" leave no discretion with the Rule Making Authority to provide or not to provide time limit for submission of statutory declaration. The Rule Making Authority has to frame rule to carry out the object and purpose of the Act in exercise of its rule making power. Therefore, it was absolutely mandatory for the Rule Making Authority to prescribe the period of limitation for submitting statutory declaration. As to what should be the period within which such submission should be made and whether there should be a provision for further extension, and if so, in what circumstances and in what matter, was left by the legislature to be provided by the Rule Making Authority. Such a provision in a fiscal statute providing for time limit within which statutory limitation to avail credit is made, is not merely procedural but not only substantive but mandatory also.

34. In the case of **ALD Automotive Pvt. Ltd. Vs. Commercial Tax Officer Now Upgraded as the Assistant Commissioner (CT) & Ors. (supra)**, Their Lordships in the Hon'ble Supreme

Court also reiterated the principles applicable to determine whether a provision is directory or mandatory as below:-

> "41. Learned Counsel for the appellant has referred to judgment of this Court in Dal Chand v. Municipal Corporation, Bhopal and another, 1984 (2) SCC 486: (AIR 1983 SC 303). This Court in the above case was considering Rule 9(j) of Prevention of Food Adulteration Rules, 1955, which requires supply of copy of the report of the public analyst within period of 10 days. The said rule was held to be directory. While considering the above case, following observations were made by this Court:
>
> > "There are no ready tests or invariable formulae to determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute. It is as well to realise that every prescription of a period within which an act must be done, is not the prescription of a period of limitation with painful consequences if the act is not done within that period. Rule 9(j) of the Prevention of Food Adulteration Act, as it then stood, merely instructed the Food Inspector to send by registered post copy of the Public Analyst's report to the person from whom the sample was taken within 10 days of the receipt of the report Quite obviously the period of 10 days

> was not a period of limitation within which an action was to be initiated or on the expiry of which a vested right accrued. The period of 10 days was prescribed with a view to expedition and with the object of giving sufficient time to the person from whom the sample was taken to make such arrangements as he might like to challenge the report of the Public Analyst, for example, by making a request to the Magistrate to send the other sample to the Director of the Central Food Laboratory for analysis. Where the effect of non-compliance with the rule was such as to wholly deprive the right of the person to challenge the Public Analyst's report by obtaining the report of the Director of the Central Food Laboratory, there might be just cause for complaint, as prejudice would then be writ large. Where no prejudice was caused there could be no cause for complaint. I am clearly of the view that Rule 9(j) of the Prevention of Food Adulteration Rules was directory and not mandatory…"
>
> 42. This Court in the above case clearly laid down that whether particular provision is mandatory or directory has to be determined on the basis of object of particular provision and design of the statute. The period of 10 days in submitting the report of the public analyst was held to be directory for the reason that on the negligence of those to whom public duties are entrusted no one should suffer. Such interpretation should not be put which may promote the public mischief and cause public inconvenience and defeat the main object of the statute. The interpretation of the Rule 9(j) in the above case was on its own statutory scheme and has no bearing in the present case. We, thus, are of the view that time period as provided in Section 19(11) is mandatory.**"**

35. The main purport of the provisions contained in Rule 117(2) of the CGST Rules, 2017, requiring submission of timely declaration is to ensure that all transitional credit issues or transitional credit claims are resolved one way or the other and stale claims may not be allowed to be made after an inordinate delay as in those cases it may be difficult to verify the correctness of the claim. The consequences of treating the provision of timely submission of statutory declaration as directory would not only

pave way for stale claims but also technical difficulties in verifying such claims after a long delay. The legislative policy as well as the provisions contained in rule, both seek to achieve the objective of timely submission of claim for transitional credit by submitting the statutory declaration in TRAN-1. Therefore, the provision has to be read as mandatory, rather directory.

35.1 In addition, we also find that the language deployed mandates period by using the word "shall". Normally, the use of word "shall", as construed, is mandatory requirement. The use of expression "within such time", as contained in sub-section (3) of Section 140 of the CGST Act, 2017, reflects legislative intention of prescription of time, within which statutory declaration has to be made, as mandatory and not directory.

36. The submission of statutory declaration in TRAN-1 is not a mere formality, but has a purpose. While the legislature intended to extend benefit of transitional credit to eligible persons, the rule framed by the Rule Making Authority seeks to ensure smooth and hassle free operation of the mechanism of availment of input tax credit. The requirement of submission of declaration is a requirement of enabling provision contained in Section 140 of the CGST Act, 2017. It is not a mere submission of certain details *dehors* the eligibility criteria prescribed under the law. The declaration bind the claimant to solemnly declare as to how and in what manner, he is eligible. The main purport of prescribing time limit is also to ensure that all claims of transitional credit are settled within a reasonable time limit. It has to be noted that provisions contained in Section 140 of the CGST Act, 2017 intended to extend the benefit of input tax credit in certain cases

by removing anomaly on account of transmission of tax regime from Central Excise Act, VAT Act and Service Tax Law to GST regime. All such claims are required to be settled within the stipulated period and it cannot be left at the choice of the claimant to claim benefit at any point of time he chooses. Moreover, the legislative policy clearly appears to avoid raising of stale claims, verification of which itself may be difficult or even impossible with passage of time due to non-maintenance of various records of sale and purchase by dealers beyond reasonable period. If the arguments of the petitioner were to be accepted, a person could claim transitional credit at any time, which could be not only months but years after. We have already held that such a provision is mandatory and cannot be termed as a directory one. Moreover, it is well settled that fiscal laws require strict construction.

37. Even though the validity of provisions contained in Rule 117 of the CGST Rules, 2017, is not under challenge in this petition, we find that the Rule Making Authority, keeping in view that it was a transitional period as a result of introduction of new indirect tax regime, sufficient time has been provided under the law. The Rule clearly provides that initially ninety days period is allowed, which could be extended for a further period of ninety days. Not only this, even beyond this, if a case is made out, on the recommendation of the GST Council, the period could be further extended. We do not think that that there could be any more liberal scheme while providing a period of limitation for submission of statutory declaration, as is contained in Rule 117 of the CGST Rules, 2017. The petitioner did not even avail that. The petitioner

has sought to raise an issue with regard to need of submission of TRAN-1 in those cases where details of CTD are submitted in TRAN-3. The argument in this regard cannot be accepted. The notification issued on 30.06.2017, followed by another notification issued on 15.09.2017, do not advance the case of the petitioner. There is nothing in those circulars to say that transitional credit is allowable at any point of time even without submitting statutory declaration in TRAN-1, as provided under the Rules. Uploading of information/particulars of CTD in TRAN-3, is for a different purpose. The submission of statutory declaration in TRAN-1 was mandatory and could not be avoided on the submission that details/particulars of CTD were submitted in TRAN-3 declaration. It is a case of the respondents that even TRAN-3 declaration was submitted beyond prescribed period. The petitioner is silent on this aspect.

38. The view which we have taken for the reasons stated hereinabove, we humbly beg to differ with the view taken by the Gujarat High Court in the case of **Siddharth Enterprises Vs. The Nodal Officer (supra)** and agree with the view taken by the Bombay High Court in the case of **JCB India Limited Vs. Union of India & Ors. (supra).**

39. In view of the above discussions, there is no merit in the writ petition and the same is accordingly dismissed. Pending application, if any, also stands dismissed.

(MUNNURI LAXMAN),J **(MANINDRA MOHAN SHRIVASTAVA),CJ**

KAMLESH KUMAR / (RESERVED)